

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 27

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7/19/00

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Platinum Technology, Inc.**

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Serial No. 75/024,894

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Matthew W. Walch of Latham & Watkins for Platinum Technology, Inc.

David H. Stine, Trademark Examining Attorney, Law Office 114  
(Mary Frances Bruce, Managing Attorney).

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Before **Cissel**, Hohein and Holtzman, Administrative Trademark Judges.

Opinion by **Holtzman**, Administrative Trademark Judge:

An application has been filed by Platinum Technology, Inc.  
to register the term SQL-MODELER as a mark for the following  
goods:<sup>1</sup>

Computer software for use in database design,  
implementation, administration and management; database  
query and reporting; client/server application and database  
development; reverse engineering of databases; database

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<sup>1</sup> Serial No. 75/024,894; filed November 28, 1995 on the Principal Register alleging a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act.

performance measurement and analysis; and for programming and application development, and instructional manuals sold as a unit therewith.

Registration has been finally refused under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark is merely descriptive of applicant's goods.

Applicant has appealed. Briefs have been filed but an oral hearing was not requested. We affirm the refusal to register.

A term is merely descriptive within the meaning of Section 2(e)(1) if it immediately conveys knowledge of the ingredients, qualities, or characteristics of the goods or services with which it is used. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). It is not necessary, in order to find a mark merely descriptive, that the mark describe each feature of the goods, only that it describe a single, significant quality feature, etc. In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985). Moreover, the question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought. See In re Engineering Systems Corp., 2 USPQ2d 1075 (TTAB 1986).

The Trademark Examining Attorney contends that SQL-MODELER describes both the nature and function of applicant's computer programs as it is used "in modeling an application's operating environment." In support of his position, the Examining Attorney

has relied on a dictionary listing for "SQL" as an acronym for "structured query language," a particular computer language. The Examining Attorney has also relied on descriptive use of the phrase "SQL models" in applicant's product literature<sup>2</sup> as well as excerpts from trade journals obtained from the NEXIS database to demonstrate the use of "SQL model" or "SQL modeling" in the trade. Portions of these articles are reproduced below (emphasis added):

HEADLINE:....Which access **model** is right for you?...BODY:...The **SQL models** store individual SQL statements as rows in a matrix, and various efficiency elements or factors as columns....This brings up a point concerning the largest drawback of the Method I **SQL modeling** approach.... *Data Based Advisor* (April, 1996).

HEADLINE:....Here's how to use database and **SQL models** to tune your system design....BODY:....details on building the database access **models** and using the database and **SQL models** to tune your system design....To build the **model**, post the results of the **SQL** analysis...against the database objects the **SQL** statements interact with. *Data Based Advisor* (June, 1996).

Logic Works Inc., the software tools company out of Princeton, New Jersey has launched version 2.5 of its Erwin/ERX **SQL modelling** tool. *Computergram International* (January 5, 1996).

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<sup>2</sup> This literature was submitted by applicant in response to the Examining Attorney's request for information under Trademark Rule 2.61(b).

In addition, we have taken judicial notice of the following dictionary definitions of the words "model" and "modeling."<sup>3</sup>

Model. (1) An approximation, representation, or idealization of selected aspects of the structure, behavior operation, or other characteristics of a real-world process, concept, or system. *IEEE Standard Computer Dictionary* (1990).

Modeling....Simulating a condition or activity by performing a set of equations on a set of data. *The Computer Glossary* (8<sup>th</sup> ed. 1998).

Applicant, on the other hand, argues that the industry term SQL is combined with "the root of another term -- MODEL -- to form the unitary expression SQL-MODELER [which] has no meaning in the industry...." Applicant contends that if "model" were an accepted term in the industry, the term would not require an explanation in applicant's literature. Applicant concludes that since "model" is not an accepted term in the industry, the term "modeler" which the Examining Attorney was "totally unable to find in use in the industry" cannot be descriptive. Maintaining that the Examining Attorney has improperly dissected its mark, applicant contends that even the "dissected terms" are not descriptive of applicant's goods since applicant's products "do not model a language." Applicant has relied on the existence of four third-party registrations and two of its own registrations

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<sup>3</sup> The Board may properly take judicial notice of dictionary definitions, including definitions in technical reference works. See, e.g., *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

for "SQL" combined with another term as evidence of the asserted suggestiveness of SQL-MODELER. Applicant argues, based thereon, that if, for example, the registered term "SQL FINANCIALS" for accounting software is not "perceived as merely descriptive," then SQL-MODELER "can hardly be considered merely descriptive of Applicant's goods...."

The evidence made of record in this case convinces us that the terms comprising the designation "SQL-MODELER," whether alone or in combination, are merely descriptive of applicant's software which, as the Examining Attorney states, performs SQL modeling functions. Applicant does not appear to dispute that "SQL" is a recognized acronym for "structured query language," a particular computer language. Indeed the dictionary definition submitted by the Examining Attorney illustrates the descriptive meaning of this term in the relevant trade. Moreover, as shown by the dictionary entries and the Examining Attorney's NEXIS references, the terms "model" and "modeling" are used in the computer industry to describe the simulation or the process of simulating a database system.

The descriptive meaning of "SQL" and the term "model" in the context of applicant's identified software is further demonstrated by applicant's own product literature. Applicant has indicated that the "ExplainSQL" program (described below) is being renamed "SQL-MODELER."

SQL statements can have many optimization plans. ExplainSQL determines the best plan by allowing you to execute the SQL in the exact environment the SQL will be embedded in.

You can create a number of ExplainSQL initialization parameters...that will **model** your application's operating environment. This means ExplainSQL can "understand" and report performance statistics that are true to the way your application works.

Thus, an "SQL model" is essentially a simulation or a design for an operational database using a standard computer language. The record shows, and the Examining Attorney correctly points out, that "SQL modeling" is an accepted practice for operational testing and refinement of database operation. By using the word "modeler" in connection with SQL instead of "model" or "modeling," applicant has not created a nondescriptive term. The relevant purchasers of applicant's software would be sophisticated individuals in the computer field who would readily understand the meaning of that word in relation to applicant's products. Such individuals would immediately recognize "modeler" as describing the software tool or the function used to create the SQL model. The fact that applicant will be or intends to be the first and/or only user of the term SQL-MODELER for computer software is not dispositive where, as here, the term unquestionably conveys a merely descriptive meaning and would be perceived as such by the relevant public. Contrary to applicant's apparent contention, the absence of third-party uses of the term does not serve to raise a presumption of

registrability. See *In re Eden Foods Inc.*, 24 USPQ2d 1757, 1761 (TTAB 1992).

Moreover, the combination of "SQL" and "MODELER" does not result in a term which is unique or any less descriptive than the words taken alone. See *In re Disc Jockeys Inc.*, 23 USPQ2d 1715 (TTAB 1992). Viewed either as individual words or a combined phrase, SQL-MODELER immediately conveys the same information to the relevant public about applicant's products.

The four third-party registrations and two registrations owned by applicant are not persuasive of a different result. Applicant argues that these registrations may be used "to indicate that a commonly registered element has a suggestive meaning for particular goods and services." We note that the only common element of the registered and applied-for marks is the term "SQL" and that the term is disclaimed in each registration applicant has identified. Under the circumstances, the conclusion to be drawn about the meaning of such terms from these registrations would be that "SQL" has been treated very consistently by the Office as a merely descriptive or otherwise unregistrable term. Thus, the mere existence of these registrations, containing only one of the elements of applicant's mark, and a disclaimed element at that, hardly justifies the registration of "SQL-MODELER" as a suggestive mark. Moreover, it has been consistently held that third-party registrations are not

conclusive on the question of descriptiveness. Each case must stand on its own merits and a mark which is merely descriptive should not be registered merely because other such marks appear on the register.<sup>4</sup> See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995) and *In re Scholastic Testing Service, Inc.*, 196 USPQ 517, 519 (TTAB 1977).

**Decision:** The refusal to register is affirmed.

R. F. Cissel

G. D. Hohein

T. E. Holtzman  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board

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<sup>4</sup> We would also point out, in this regard, that while the numerous cases cited by applicant may provide guidance in determining whether a particular designation is descriptive, those cases are not factually analogous to the present case and thus, do not mandate a finding that the present mark is not descriptive.